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 13 CONTINENTAL D.I.A. DIAMOND PRODUCTS, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 CONTINENTAL D.I.A. DIAMOND  
 17 PRODUCTS, INC., a California corporation,

18 Plaintiff,

19 vs.

20 DONG YOUNG DIAMOND INDUSTRIAL  
 21 CO., LTD., a South Korean company,  
 22 DONGSOO LEE, an individual, and DOES 1-  
 23 10, inclusive,

24 Defendants.

25 Case No. CV 08-2136 SI

26 **PLAINTIFF'S RESPONSE TO  
 27 DEFENDANTS' REQUEST TO  
 28 ENLARGE TIME AND REPLY TO  
 29 DEFENDANTS' OPPOSITION TO  
 30 PLAINTIFF'S MOTION TO STRIKE**

31 Date: August 29, 2008  
 32 Time: 9:00 a.m.  
 33 Place: Courtroom 10, 19<sup>th</sup> Floor  
 34 Judge: Honorable Susan Illston

35 Complaint Filed: April 24, 2008  
 36 Trial Date: None Set

1 Plaintiff Continental D.I.A. Diamond Products, Inc. submits this brief in response to  
2 Defendants' late-filed opposition to Plaintiff's motion to strike and ex post fact request for an  
3 extension to file that opposition. Plaintiff respectfully requests that the Court disregard the  
4 Defendants' opposition and motion for an extension of time.

5 While Plaintiff is sympathetic to the predicament that Defendants were in as a result of the  
6 mistake of counsel, there is a far-greater concern regarding Defendants' unwillingness to set-forth  
7 sufficient facts to support their conclusory allegations of fraud and the like in their Counterclaim  
8 and Answer as required by Federal Rules of Civil Procedure 8 and 9. Certainly, if Defendants had  
9 facts supporting such claims and defenses, it would have been far more credible and productive for  
10 Defendants to file an amended answer rather than filing an untimely opposition that offers little  
11 more than horn book law on why motions to strike are disfavored by courts. However, Defendants'  
12 continuing inability to articulate **any** facts to support their defenses, such as fraud, estoppel, and  
13 unclean hands, demonstrates that with certainty that those defenses are meritless and Plaintiff's  
14 motion to strike is well-taken. Indeed, Defendants ask the Court for leave to amend if Plaintiff's  
15 motion to strike is granted, yet offer no factual basis to justify that request. Accordingly, regardless  
16 of whether the Court considers Defendants' late-filed opposition, Plaintiff respectfully requests that  
17 the Court grant Plaintiff's motion to strike in its entirety.

Dated: August 19, 2008

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

/s/ Jeffrey M. Ratinoff  
By: JEFFREY M. RATINOFF

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